



PUGET SOUND AIR POLLUTION CONTROL AGENCY
KING COUNTY KITSAP COUNTY PIERCE COUNTY SNOHOMISH COUNTY

August 5, 1996

RECEIVED

AUG 06 1996

AGCW-SEATTLE

Mr. Scott Pattison
Port of Seattle
Terminal 106
Seattle, WA 98134

Dear Mr. Pattison:

Ash Grove Cement Company Fallout Complaints

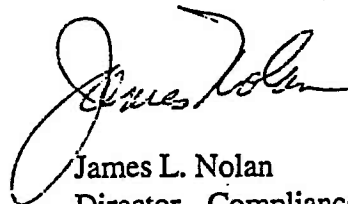
This is to document the commitments discussed during the meeting held at your office on July 24, 1996.

I am enclosing a copy of the Consent Order and Assurance of Discontinuance between PSAPCA and Ash Grove Cement Company dated May 23, 1996. This agreement contains a number of required actions to be taken by Ash Grove designed to address the fallout problems at Terminal 106. In addition, I am enclosing a letter from Ash Grove dated July 17, 1996, describing the immediate steps they are taking concerning the two conveyors closest to Terminal 106 and the kiln seal.

If these steps are not sufficient to prevent the fallout problems at Terminal 106, we will ensure that Ash Grove employs additional control measures, as necessary to correct the problem. In this regard, we are seeking your assistance in evaluating the effectiveness of these measures once they have been completed. Before this evaluation takes place, we recommend the Port arrange for a thorough cleaning of the gutters and the roofs of the Terminal 106 facility.

The other concern we discussed involved the potential health concerns of Terminal 106 employees. On July 25, 1996, I telephoned Keith Benham to better understand the questions raised by Port employees during the meeting on July 24, 1996. Mr. Benham said he would set up a meeting with the employees involved which I also plan to attend. Following this meeting, Mr. Benham and I will develop a plan for answering their questions.

Sincerely,



James L. Nolan
Director - Compliance

cc: - Ash Grove Cement Co.

JLN/cbc

Dennis J. McLerran, Air Pollution Control Officer
B O A R D O F D I R E C T O R S

Chairman: Win Granlund, Commissioner, Kitsap County
Janet Chalupnik, Member at Large
Edward D. Hansen, Mayor, Everett

Lynn S. Horton, Mayor, Bremerton
R.C. Johnson, Councilman, Snohomish County
Gary Locke, King County Executive

Brian Ebersole, Mayor, Tacoma
Norman B. Rice, Mayor, Seattle
Doug Sutherland, Pierce County Executive

110 Union Street, Suite 500, Seattle, Washington 98101-2038

(206) 343-8800

(800) 552-3565

FAX: (206) 343-7522

AGCS2M000903

HELLER EHRMAN WHITE & McAULIFFE

ATTORNEYS

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

6100 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE
WASHINGTON 98104-7098
FACSIMILE (206) 447-0849
TELEPHONE (206) 447-0900

May 29, 1996

ANCHORAGE
LOS ANGELES
PALO ALTO
PORTLAND
SAN FRANCISCO
TACOMA

(206) 389-6010

14362-0005

Robert V. Jensen, Presiding
Pollution Control Hearings Board
4224 Sixth Avenue SE
Rowe Six, Building No. 2
P.O. Box 40903
Lacey, Washington 98504-0903

Re: PCHB No. 96-3 & -13
ASH GROVE CEMENT COMPANY v. PSAPCA

Dear Mr. Jensen:

The parties have agreed upon a mutually satisfactory resolution to the consolidated appeals referenced above. Enclosed is an agreed order, signed by counsel for both parties, moving for dismissal of the consolidated appeals.

Also enclosed is a copy which we would appreciate your conforming and returning to us in the envelope provided. Thank you for your assistance.

Very truly yours,

HELLER, EHRMAN, WHITE & McAULIFFE


Svend A. Brandt-Erichsen

Enclosures

cc: Laurie S. Halvorson
✓ Gerald Brown

I:\SXB\14362-05\C.009

AGCS2M000904

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

ASH GROVE CEMENT COMPANY,

Appellant

vs.

PUGET SOUND AIR POLLUTION CONTROL
AGENCY,

Respondent.

PCHB Nos. 96-3 & 96-13

AGREED ORDER OF DISMISSAL

Comes now the respondent, the Puget Sound Air Pollution Control Agency (PSAPCA), by and through its General Counsel, Laurie S. Halvorson, and the appellant, Ash Grove Cement Company (Ash Grove), by and through its attorney, Svend A. Brandt-Erichsen, to move for dismissal of this action on the following grounds:

I. RECITALS

PSAPCA issued and served Notice and Order of Civil Penalty Nos. 8267 and 8275 dated October 30, 1995 and December 13, 1995 in the total amount of \$29,000.00 to Ash Grove. Ash Grove appealed both penalty assessments in a timely manner.

These two penalty assessments were based upon alleged violations of Section 9.11(a) of PSAPCA Regulation I. Ash Grove

AGREED ORDER OF DISMISSAL - 1

HELLER EHRMAN WHITE & MCAULIFFE
ATTORNEYS

AGCS2M000905

6100 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7098
TELEPHONE (206) 447-0000

1 denies that it has caused any such violations and contests the
2 validity of the underlying notices of violation.

3
4 II. SETTLEMENT

5 Ash Grove and PSAPCA desire to avoid the cost and expense of
6 further litigation. Therefore, without admitting fault or any
7 improper action, the parties have agreed to the dismissal of this
8 appeal on the following terms and conditions:

9
10 1. PSAPCA has withdrawn and canceled Civil Penalty Nos. 8267 and
11 8275 and issued to Ash Grove in their place Civil Penalty No. 8355
12 in the amount of \$29,000 for violations of Section 9.15(a) of
13 PSAPCA Regulation I by causing or allowing the emission of
14 fugitive dust without using the best available control technology
15 to control the emissions.

16
17 2. PSAPCA and Ash Grove have entered into an Assurance of
18 Discontinuance dated May 24, 1996, which PSAPCA accepts in full
19 resolution of Civil Penalty No. 8355. Ash Grove has agreed not to
20 appeal that Assurance of Discontinuance.

21
22
23
24
25
26
27 AGREED ORDER OF DISMISSAL - 2
28

HELLER EHRMAN WHITE & McAULIFFE
ATTORNEYS

AGCS2M000906

6100 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7098
TELEPHONE (206) 447-0900

1
2 Dated this 29th day of May, 1996.

3 PUGET SOUND AIR POLLUTION
4 CONTROL AGENCY

HELLER, EHRMAN, WHITE &
McAULIFFE

5 By: Laurie Halvorson
6 Laurie S. Halvorson WSB #17313
7 Attorney for Respondent

By: Svend A. Brandt-Erichsen
8 Svend A. Brandt-Erichsen
9 WSB # 23923
10 Attorney for Appellant
11 Ash Grove Cement Company

12
13
14
15
16
17
18
19 -
20
21
22
23
24
25
26
27
28 AGREED ORDER OF DISMISSAL - 3

HELLER EHRMAN WHITE & McAULIFFE
ATTORNEYS

AGCS2M000907

6100 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7098
TELEPHONE (206) 447-0900

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER OF DISMISSAL

The Board having been advised that the parties have reached settlement in the above matter, and it appearing that there is no contested case herein;

IT IS HEREBY ORDERED that the above entitled appeal be and same is dismissed without costs or attorney fees.

DONE at Lacey, WA, this _____ day of _____, 1996.

POLLUTION CONTROL HEARINGS BOARD

James A. Tupper, Jr., Presiding

Richard C. Kelley

Robert V. Jensen

Presented by:
PUGET SOUND AIR POLLUTION
CONTROL AGENCY

By: Laurie Halvorson
Laurie S. Halvorson WSB #17313
Attorney for Respondent

HELLER, EHRMAN, WHITE & MCAULIFFE

By: Svend A. Brandt-Erichsen
Svend A. Brandt-Erichsen, WSB #23923
Attorney for Appellant
Ash Grove Cement Company



PUGET SOUND AIR POLLUTION CONTROL AGENCY
KING COUNTY KITSAP COUNTY PIERCE COUNTY SNOHOMISH COUNTY

August 5, 1996

RECEIVED

AUG 06 1996

AGCW-SEATTLE

Mr. Scott Pattison
Port of Seattle
Terminal 106
Seattle, WA 98134

Dear Mr. Pattison:

Ash Grove Cement Company Fallout Complaints

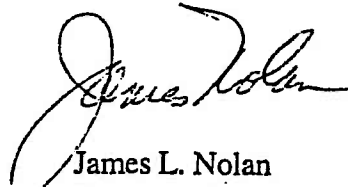
This is to document the commitments discussed during the meeting held at your office on July 24, 1996.

I am enclosing a copy of the Consent Order and Assurance of Discontinuance between PSAPCA and Ash Grove Cement Company dated May 23, 1996. This agreement contains a number of required actions to be taken by Ash Grove designed to address the fallout problems at Terminal 106. In addition, I am enclosing a letter from Ash Grove dated July 17, 1996, describing the immediate steps they are taking concerning the two conveyors closest to Terminal 106 and the kiln seal.

If these steps are not sufficient to prevent the fallout problems at Terminal 106, we will ensure that Ash Grove employs additional control measures, as necessary to correct the problem. In this regard, we are seeking your assistance in evaluating the effectiveness of these measures once they have been completed. Before this evaluation takes place, we recommend the Port arrange for a thorough cleaning of the gutters and the roofs of the Terminal 106 facility.

The other concern we discussed involved the potential health concerns of Terminal 106 employees. On July 25, 1996, I telephoned Keith Benham to better understand the questions raised by Port employees during the meeting on July 24, 1996. Mr. Benham said he would set up a meeting with the employees involved which I also plan to attend. Following this meeting, Mr. Benham and I will develop a plan for answering their questions.

Sincerely,


James L. Nolan
Director - Compliance

cc: - Ash Grove Cement Co.

JLN/cbc

Dennis J. McLerran, Air Pollution Control Officer

B O A R D O F D I R E C T O R S

AGCS2M000909

Chairman: Win Granlund, Commissioner, Kitsap County
Janet Chalupnik, Member at Large
Edward D. Hansen, Mayor, Everett

Lynn S. Horton, Mayor, Bremerton
R.C. Johnson, Councilman, Snohomish County
Gary Locke, King County Executive

Brian Ebersole, Mayor, Tacoma
Norman B. Rire, Mayor, Seattle
Doug Sutherland, Pierce County Executive

110 Union Street, Suite 500, Seattle, Washington 98101-2038

(206) 343-8800

(800) 552-3565

FAX: (206) 343-7522

HELLER, EHRMAN, WHITE & McAULIFFE

ATTORNEYS
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

6100 Columbia Center - 701 Fifth Avenue
Seattle, Washington 98104-7098
Telephone (206) 447-0900 - Facsimile (206) 447-0849

TELECOPY TRANSMITTAL SHEET

THE INFORMATION CONTAINED IN THIS COMMUNICATION IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE AND MAY BE CONFIDENTIAL, MAY BE ATTORNEY-CLIENT PRIVILEGED AND MAY CONSTITUTE INSIDE INFORMATION. UNAUTHORIZED USE, DISCLOSURE OR COPYING IS STRICTLY PROHIBITED, AND MAY BE UNLAWFUL. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US AT (206) 389-6001.

DATE: March 11, 1996 TIME SENT: 10:00 a.m.m

TO: Gerald Brown

Ash Grove Cement

TELECOPY NO: 206-623-5355 PHONE NO: 206-623-5596

FROM: Svend Brandt-Erichsen

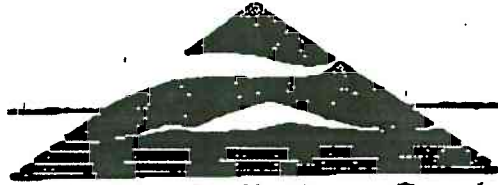
TELECOPY NO: (206) 447-0849

TOTAL NUMBER OF PAGES (INCLUDING THIS SHEET): 5

MESSAGE:

| | |
|------------|-------------------------|
| CLIENT: | <u>Ash Grove Cement</u> |
| MATTER: | <u></u> |
| CLIENT NO: | <u>14362</u> |
| MATTER NO: | <u>0005</u> |

IF YOU HAVE QUESTIONS, OR DO NOT RECEIVE ALL PAGES, PLEASE CALL (206) 447-0900 Ext. 6035.



Puget Sound Air Pollution Control Agency
110 Union Street, Suite 500,
Seattle, WA 98101-2038

RECEIVED
55 MAR 11 AM 9:30
Heller Ehrman
Heller Ehrman
& McAuliffe

Facsimile Cover Sheet

| | |
|---|------------------------------|
| To: | Svend Brandt-Erichsen |
| Company: | Heller Ehrman |
| Phone: | |
| Fax: | 447-0849 |
| From: | Laurie S. Halvorson |
| Phone: | (206) 689-4030 |
| Fax: | (206) 343-7522 |
| Date: | March 11, 1996 |
| Pages including this cover page: | 4 |

Please call Cindy at 689-4076 if you have problems receiving this facsimile

RE:

Comments:

NOTICE: This facsimile transmission may contain information which is protected by the attorney/client privilege. If you are not the intended recipient, you are hereby notified that any disclosure, or taking of any action in reliance on the contents is strictly prohibited. If you have received this transmission in error, please contact us immediately so that we may arrange for return of the document.

AGCS2M000911



PUGET SOUND AIR POLLUTION CONTROL AGENCY
KING COUNTY Δ KITSAP COUNTY Δ PIERCE COUNTY Δ SNOHOMISH COUNTY

March 11, 1996

VIA FAX - 447-0849

Svend A. Brandt-Erichsen
Heller Ehrman White & McAuliffe
6100 Columbia Center
701 Fifth Avenue
Seattle, WA 98104-7098

RE: Civil Penalty Nos. 8267, 8275, 8311

Dear Svend:

This is in response to Ash Grove's offer of settlement dated February 28, 1996 regarding the above civil penalties. To begin with, as I have discussed with you, PSAPCA wants to work with Ash Grove to resolve the problems leading to the issuance of the several outstanding notices of violation and civil penalties. PSAPCA would like to address resolution of these problems in a comprehensive manner, one which focuses on instituting effective environmental management systems to insure environmental compliance at the facility. This desire led to the proposal PSAPCA initially made to Ash Grove. PSAPCA believes that several of the provisions contained in its settlement proposal, such as the internal environmental audit team and community relations efforts, are worthy programs and would be effective in addressing the fallout problems. PSAPCA encourages Ash Grove to consider implementing such programs even if they are not part of a settlement agreement.

It appears that Ash Grove wishes to narrow the focus of the settlement discussions and thus, PSAPCA's comments are specific to the counterproposal made by Ash Grove. I want to emphasize that in any event, PSAPCA remains committed to working cooperatively with Ash Grove.

As part of its settlement proposal, Ash Grove proposes that Civil Penalty Nos. 8267 and 8275 be reissued as violations of section 9.15(c). PSAPCA understands that through its proposal, Ash Grove is exploring creative ways to resolve the above three penalties, however rewriting the penalties as section 9.15(c) violations is not acceptable to PSAPCA.

Generally, PSAPCA only cites violations of section 9.15(c) when an Agency inspector or employee has documented visible emissions from refuse burning equipment, fuel burning equipment, equipment used in a manufacturing process, or control equipment. PSAPCA does not believe it has sufficient documentation in this regard with

Dennis J. McLellan, Air Pollution Control Officer

BOARD OF DIRECTORS

Chairman: Win Granlund, Commissioner, Kitsap County
Janet Chalupnik, Member at Large
Edward D. Hansen, Mayor, Everett

Lynn S. Horton, Mayor, Bremerton
R.C. Johnson, Councilman, Snohomish County
Gary Locke, King County Executive

Harold G. Moss, Mayor, Tacoma
Norman B. Rice, Mayor, Seattle
Doug Sutherland, Pierce County Executive

110 Union Street, Suite 500, Seattle, Washington 98101-2038 Δ (206) 343-8800 Δ (800) 552-3565 Δ FAX: (206) 343-7522
Printed on recycled paper

AGCS2M000912

Svend A. Brandt-Erichsen
March 11, 1996
Page - 2

respect to the penalties at issue here. If the PSAPCA inspectors who wrote the notices of violation underlying Civil Penalty Nos. 8267 and 8275 believed the facts demonstrated violations of section 9.15, the notices would have so indicated. Reissuing the penalties with citations to violations of section 9.15(c) would be a significant deviation from PSAPCA policies. To rewrite the notices at this time would raise serious questions regarding the Agency's credibility.

Therefore, any settlement agreement PSAPCA and Ash Grove execute would need to resolve the civil penalties as they were initially issued, citing section 9.11 violations, for the agreement to be acceptable to PSAPCA.

In addition to the above comments regarding reissuing the penalties, PSAPCA has the following specific comments regarding the proposed Assurance of Discontinuance (AOD):

Section 1, Project B. This section concerns the G-cooler and states that construction will be complete by May 30, 1995. Should this state May 30, 1996 rather than 1995?

Section 1, Project E. Is there a completion date for sealing the openings in the roof monitor?

Section 2. With respect to the conveyor specialist position, it is unclear when this person would actually begin working. PSAPCA would prefer more specific language in this regard.

Paragraph 2 of section 2 refers to enclosures constructed under paragraph 2. Should this reference be to paragraph 1?

With respect to paragraph 3 of section 2, PSAPCA would suggest the first sentence be revised to state that revisions or additions to the operation and maintenance plan be reviewed by PSAPCA but not approved.

Finally, PSAPCA is not agreeable to paragraph 4 of section 2 regarding compliance with EPA guidance and this paragraph should be deleted. PSAPCA was willing to entertain this type of language if Ash Grove would enter into a broader agreement that included provisions such as creating an environmental audit team, but is not willing to include this provision in an AOD with a much narrower scope.

Svend A. Brandt-Erichsen
March 11, 1996
Page - 3

Section 3. Consistent with PSAPCA's original offer, PSAPCA would be willing to resolve the penalties under the terms of this proposed AOD if Ash Grove paid half the penalties, or \$16,000.00, plus the lab costs, for a total of \$21,489.76. The remaining \$16,000.00 would be suspended.

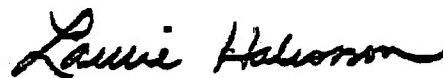
Also, the reference to PSAPCA's approval of operation and maintenance plans in paragraph 2 of this section should be deleted.

I realize that based upon the above comments from PSAPCA, Ash Grove may not be as willing to consider settlement of this matter. Hopefully, we can reach resolution but I recognize that may not be the case. Given that PCHB hearing dates are approaching, I would suggest that we try to determine whether intense negotiations should continue now to reach a satisfactory resolution, or whether we should begin discussing with the PCHB how we would like these hearings to proceed. By that I mean that the appeals probably should be consolidated, the hearing date continued into the early summer sometime to allow all parties sufficient time to prepare, and a pre-hearing conference scheduled as soon as possible to set appropriate deadlines.

In addition, if it appears that we will be proceeding to hearing before the PCHB, as I mentioned to you by telephone, I would like to explore the option of mediation of this matter by the PCHB. We can discuss this further if appropriate and agreeable to Ash Grove.

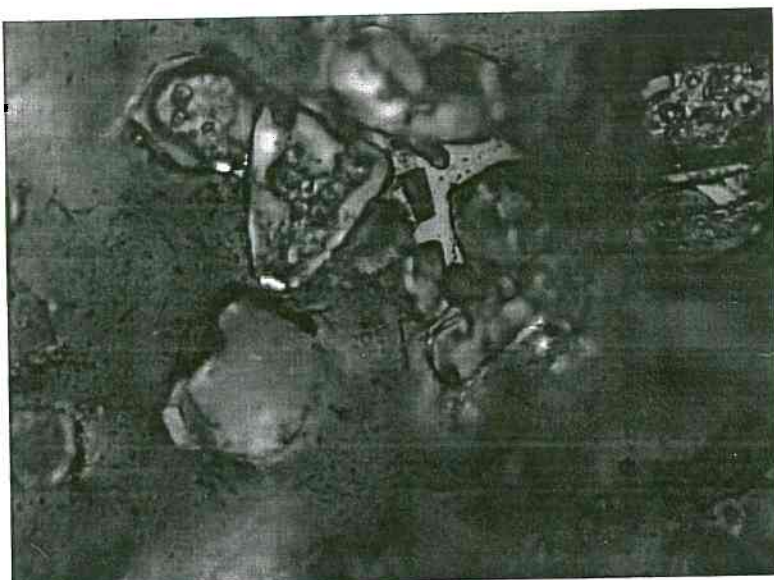
As we discussed, I hope to speak to you before Wednesday regarding the status of our settlement efforts. Regardless of the outcome of our current negotiations, PSAPCA remains committed to working with Ash Grove to identify the sources of the fallout and determine methods to address such sources. Thank you for your efforts in attempting to resolve these issues.

Sincerely,



Laurie S. Halvorson
General Counsel

LSH/lmb
cc: James Nolan



1210-96 H2O/CDTA 400x PSAPCA(CTL) #1



1210-96 H2O/CDTA 200x PSAPCA(CTL) #2



1210-96 H2O/CDTA 200x PSAPCA(CTL) #3

ASH GROVE CEMENT SEATTLE

MEASUREMENT DATE
SAMPLE DATE
SEATTLE NUMBER
SAMPLE TYPE

POLISHED SECTION WORK FILE

01-AUG-96

PSAPCA DUST SAMPLE RECEIVED AT AGC SEATTLE 07/31/96

RECEIVED AT CTL MARCH 5, 1996

SEATTLE LAB# 1210-96

SPLIT WITH CTL LAB CLIENT #9602141623

TYPE ENVIRONMENTAL DUST SAMPLE CTL I.D. #919015 PROJECT #405182

| CLINKER PARTICLE SIZE | FREE ALITE SIZE | FREE BELITE SIZE | FOREIGN MATERIAL PARTICLE SIZE |
|-----------------------------|-----------------------|------------------------|--------------------------------------|
|-----------------------------|-----------------------|------------------------|--------------------------------------|

| | | | | |
|--------------------------------|----|----|----|----|
| AVERAGE SIZE MICRONS | 67 | 38 | 26 | 48 |
| STANDARD DEVIATION MICRONS | 28 | 13 | 11 | 23 |
| COUNTS | 30 | 67 | 9 | 31 |
| APPROXIMATE PERCENT OF CLINKER | 49 | | | |

GENERAL COMMENTS

PREPARATION AND COUNTING METHODS

General preparation method was achieved by encapsulation of the dust sample in three plastic retaining columns within a petrographic rubber mold. The material was encapsulated with Buehler LTD Eptoin resin and cured 24 hours. The preparation was then cut in crosssection with an isomet saw. The material was lapped using an 8 inch petrographic lapping wheel with appropriate abrasives. Staining was achieved with a 20 second H2O etch followed by a 60 second CDTA stain to bring out vivid colors of the reactive clinker particles. Counting methods consisted of linear x-y transit across the cut crosssection. Quantification consisted of identifying two groups, clinker particles (reactive and staining) and foreign material particles (nonstaining). Size measurements and specific crystal identification (Alites and Belites) was performed on the clinker particles.

CLINKER COMMENTS:

The Portland Cement Clinker consisted of single crystals and groups of crystals. These crystals showed predominantly Alite crystals either single or in clusters. There were relatively few Belites, but one Belite Cluster was observed. The Alite clusters showed normal liquid (C4AF, C3A as a matrix) and an occasional Belite. The Clinker particles were either round or irregularly round. Single crystals observed had the classic hexagonal shape for Alites, and more rounded shapes typically observed for Belites.

FOREIGN MATERIAL COMMENTS:

Foreign material did not take stain or stained a light pink. There was a mix of material including what appeared to be fibers. The material was examined under reflective light but in most cases the material appeared to be quartz. This was evident by conchoidal fractures and highly irregular crescent shapes. There was a minor amount of fiber appearing material and some brightly reflective particles which may be metallic.

PICTURE CAPTIONS

1210-96 H2O/CDTA 400x #1

High power view of typical dust particles embedded in an epoxy matrix. Note the very bright colors of the reactive clinker particles (yellow, purple, blue). There are two clinker particles in the top of the picture. The clinker particle to the left shows 5 Alite crystals (hexagonal and brightly staining). There is a slightly out of focus Quartz? particle in the lower center (pink).

1210-96 H2O/CDTA 200x #2

Medium power view of brightly staining clinker particles and non staining quartz particles. There are two pink quartz particles in the center left of the picture and two on the right side. Note the very sharp fracture lines on the quartz(?) particles. Dark appearing faint particles lie under the plane of the crosssection and are not counted.

1210-96 H2O/CDTA 200x #3

Medium power view of two brightly staining clinker particles and one conchoidal fractured foreign particle. Individual Alite particles are observed within the particle.